

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-6483

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

CHARLES ANTHONY COTTON, JR.,

Defendant - Appellant.

Appeal from the United States District Court for the Western
District of Virginia, at Roanoke. Jackson L. Kiser, Senior
District Judge. (CR-95-30)

Submitted: July 21, 2004

Decided: August 19, 2004

Before NIEMEYER, MOTZ, and KING, Circuit Judges.

Remanded by unpublished per curiam opinion.

Charles Anthony Cotton, Jr., Appellant Pro Se. Joseph William
Hooge Mott, Assistant United States Attorney, Roanoke, Virginia,
for Appellee.

Unpublished opinions are not binding precedent in this circuit.
See Local Rule 36(c).

PER CURIAM:

Charles Anthony Cotton, Jr., seeks to appeal the district court's order denying his motion to reduce his sentence pursuant to 18 U.S.C. § 3582(c) (2000). In criminal cases, a defendant must file his notice of appeal within ten days of "the entry of either the judgment or order being appealed." Fed. R. App. P. 4(b)(1)(A); see United States v. Ono, 72 F.3d 101, 102-03 (9th Cir. 1995) (applying ten-day appeal period of Rule 4(b) to § 3582(c) motions). With or without a motion, the district court may grant an extension of time to file of up to thirty days upon a showing of excusable neglect or good cause. Fed. R. App. P. 4(b)(4); United States v. Reyes, 759 F.2d 351, 353 (4th Cir. 1985).

The district court entered its judgment on February 5, 2004; the ten-day appeal period expired on February 20, 2004. Cotton filed his notice of appeal pro se on March 8, 2004, which was after the ten-day period expired but within the thirty-day excusable neglect period.* Because the notice of appeal was filed within the excusable neglect period, we remand to the district court for the court to determine whether Cotton has shown excusable neglect or good cause warranting an extension of the ten-day appeal period. The record, as supplemented, will then be returned to this court for further consideration. We dispense with oral argument

*We have accorded Cotton the date he wrote on the notice of appeal as the filing date. See Houston v. Lack, 487 U.S. 266 (1988).

because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

REMANDED